IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

O.P.No.3436 of 2000(H)

PETITIONER:-

M/S.KAY CEE DISTILLERIES,
CHENGALOOR, PUDUKKAD, THRISSUR DISTRICT,
A REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER, K.C.PREMAN.

BY ADV. SRI.T.A.SHAJI

RESPONDENTS:-
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1. STATE OF KERALA, RPERESENTED BY THE SECRETARY TO GOVT., REVENUE DEPARTMENT, GOVT. OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ADDL. SALES TAX OFFICER-II, AGRICULTURAL INCOME TAX AND SALES TAX, IRINJALAKUDA.

3. THE APPELLATE ASSISTANT COMMISSIONER, AGRICULTURAL INCOME TAX AND SALES TAX, THRISSUR.

4. THE KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION LIMITED, SASTHAMANGALAM, THIRUVANANTHAPURAM.

5. THE DEPUTY TAHSILDAR (R.R.), KODUNGALLUR.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

O.P.NO.3436 of 2000-H

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF THE ASSESSMENT ORDER DATED 9.3.1999 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 1995-96.

EXT.P2 - TRUE COPY OF THE ASSESSMENT ORDER DATED 9.3.1999 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 1996-97.

EXT.P3 - TRUE COPY OF THE ASSESSMENT ORDER DATED 9.3.1999 ISSUED BY THE 2ND RESPONDENT FOR THE YEAR 1997-98.

EXT.P4 - TRUE COPY OF THE APPEAL DATED 17.4.1999 ALONG WITH THE STAY PETITION SUBMITTED BY THE PETITIONER AGAINST EXT.P1.

EXT.P5 - TRUE COPY OF THE APPEAL DATED 17.4.1999 ALONG WITH THE STAY PETITION SUBMITTED BY THE PETITIONER AGAINST EXT.P2.

EXT.P6 - TRUE COPY OF THE APPEAL DATED 17.4.1999 ALONG WITH THE STAY PETITION SUBMITTED BY THE PETITIONER AGAINST EXT.P3.

EXT.P7 - TRUE COPY OF THE DEMAND NOTICE DATED 25.01.2000 ISSUED BY THE 5TH RESPONDENT DATED 25.01.2000 ISSUED BY THE 5TH RESPONDENT.

EXT.P8 - TRUE COPY OF THE NOTICE BEFORE ATTACHMENT ISSUED BY THE 5TH RESPONDENT DATED NIL.

EXT.P9 - TRUE COPY OF THE ATTACHMENT NOTICE DATED 21.6.2000 ISSUED BY THE TAHSILDAR, KODUNGALLUR.

H.L.Dattu,C.J. & K.T.Sankaran,J.

O.P.No.3436 of 2000-H

Dated, this the 18th day of June, 2007

JUDGMENT

H.L.Dattu,C.J.

The petitioner is a registered partnership firm. It is engaged in the manufacture and bottling of Indian Made Foreign Liquor.

2. For the assessment years 1995-96, 1996-97 and 1997-98, assessment had been completed by the assessing authority. Aggrieved by the said orders of assessment, the assessee had carried the matter in appeal before the first appellate authority. During the pendency of the appeals, the petitioner was before this Court for the following reliefs. They are as under:

> "(i) issue a writ of certiorari, quashing the originals of Exhibits P1 to P3, P7 and P8;
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> (ii) declare that the petitioner is not liable for the levy of any turnover tax on the turnover actually returned by the petitioner for the concerned assessment years based on the sale price collected by the petitioner for the sale of Indian Made Foreign Liquor in favour of the fourth respondent namely Kerala State Beverages Corporation.
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> (iii) declare that the petitioner is not liable for the levy of any turnover tax in terms of sub clause (b) of sub section 2C of Section 5 including any excise duty payable on the liquor manufactured and sold by the petitioner in favour of the fifth respondent under the provisions of the Abkari Act or under the Storage and Bond Rules;
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> (iv) issue a writ of mandamus or any other writ order or direction commanding the 3rd respondent to dispose of Exhibits P4 to P6 appeals in the light of the decision of the Hon'ble Court in O.P.No.23008/98 and connected cases".

3. Similar issue came up for consideration before this Court in W.P.(C).No.30672 of 2003. This Court by order dated 14th November, 2006

was pleased to reject the writ petition subject to the declaration made in paragraph 7 of the judgment.

4. The issue raised in the present writ petition is identical to the one raised and considered in the case of *Messrs K.S.Distillery* v. *State of Kerala* - W.P.(C). No.30672 of 2003, disposed of on 14.11.2006. Following the observations made therein, this Original Petition is disposed of in the same terms, conditions, orders and directions issued in that case.

Ordered accordingly.

Consequently, C.M.P.Nos.5636 of 2000 and 31845 of 2000 are dismissed.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-